

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



V

IRA LEXUS OF MANCHESTER

DECISION OF THE HEARING OFFICER

Nature of Dispute: RSA 275:43 I unpaid commissions

Employer: IRA Lexus of Manchester, 18 Kilton Road, Bedford, NH 03110

Date of Hearing: February 10, 2014

Case No. 47035

BACKGROUND AND STATEMENT OF THE ISSUES

A Wage Claim was filed with the Department of Labor on November 20, 2013. The notice was sent to the employer and there was an objection. The objection was sent to the claimant and there was a request for a hearing. The Notice of Hearing was sent to both parties on January 10, 2014.

The claimant testified that he worked for the employer for about two and a half years. There was a hiring plan in place and he signed off on the plan. The Wage Claim is for the payment of a "split sale" where another employee shares in the commission.

The claimant said that he made a phone contact with a customer and set up a time to meet with the customer. When the customer came into the dealership he met with another salesperson. The customer bought the vehicle and the other sales person got the entire commission. The claimant believes that the policy is clear and he should have a split commission in this case.

The employer stated that the claimant was not entitled to a split commission because he never did anything on the sale except take a call and set up an appointment. The other sales person did the work and delivered the vehicle.

The employer also showed that the original hiring policy addressed split commissions and they were entirely up to management to award or deny. In this case the commission was denied. The claimant should have been aware of the policy because he signed off on it.

The employer also stated that the split would have been \$181.30 instead of \$500.00 cited in the Wage Claim.

FINDINGS OF FACT

RSA 275:43 I. Every employer shall pay all wages due to employees within 8 days including Sunday after expiration of the week in which the work is performed, except when permitted to pay wages less frequently as authorized by the commissioner pursuant to paragraph II, on regular paydays designated in advance by the employer and at no cost to the employee.

803.01 (a). Pursuant to RSA 275:43, I and II, every employer shall pay all wages due to his/her employees within 8 days, including Sundays, after the expiration of the workweek on regular paydays designated in advance. Biweekly payments of wages shall meet the foregoing requirement if the last day of the second week falls on the day immediately preceding the day of payment. Payment in advance and in full of the work period, even though less frequently than biweekly, also meets the foregoing requirement.

This section of the law mandates an employer to pay an employee all wages due at the time the wages are due and owing. Commissions are wages under this section.

It is the finding of the Hearing Officer, based on the written submissions and the testimony provided for the hearing, that the Wage Claim is invalid. The claimant has the burden to show that there are wages due and owing and he did not meet this burden.

The claimant expressed many points of confusion in this claim. It appears that there is a gray area as to the policy of entering a sales file to verbal conversations with immediate supervisors. This could lead to an employee being unsure of the exact policy interpretation.

The employer made it very clear that the prevailing written policy was the hiring agreement. In that agreement it was clear that the policy on split commissions was a management prerogative. Management was certain in this Wage Claim that there was not a split commission argument. The representative of "upper" management made it clear that there was no split commission in this case.

The Wage Claim is invalid because of the written hiring agreement.

DECISION

Based on the testimony and evidence presented, as RSA 275:43 I requires that an employer pay all wages due an employee, and as this Department finds the claimant failed to prove by a preponderance of the evidence that he was not paid all wages due, it is hereby ruled that the Wage Claim is invalid.

Thomas F. Hardiman

Hearing Officer

Date of Decision: March 11, 2014

Original: Claimant
cc: Employer

TFH/all